

# Director's Decision

## Summary of Application

<b>FILE NUMBER:</b>	C23-0005
<b>PROPOSAL:</b>	The Columbia River Gorge Commission has received an application for a new 12' x 16' (192 sq ft) accessory building.
<b>APPLICANTS:</b>	Scott White
<b>LANDOWNERS:</b>	Scott White and Amber Gruber
<b>SIZE and LOCATION:</b>	The subject parcel is approximately 11.5 acres in size, located adjacent to SR-141, and is described as Tax Lot Number 03-10-1100-0019/00 in the southern half of Section 11, Township 3 North, Range 10 East, Willamette Meridian, Klickitat County, Washington.
<b>LAND USE DESIGNATION:</b>	General Management Area (GMA) – Large-Scale Agriculture (160)

## Decision

Based upon the findings of fact and conclusions of law in the staff report accompanying this decision and the conditions of approval in this decision document, the land use application by Scott White, for an accessory building, is consistent with Commission Rules chapter 350, division 082, and thus consistent with the *Management Plan for the Columbia River Gorge National Scenic Area* and the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act, Pub. L. 99-663, 100 Stat. 4274 (1986), and is hereby **APPROVED**.

## Conditions of Approval

The following conditions of approval are given to ensure that the subject request is consistent with Commission Rules chapter 350, division 082. Compliance with these conditions of approval is required. The Gorge Commission may take one or more enforcement actions at any time to ensure compliance with these conditions of approval.

1. In accordance with Commission Rule 350-082-0150(3), the applicant shall record the Executive Director's decision and conditions of approval and approved site plan and elevation drawings in county deeds and records (at the Klickitat County Auditor's Office) to ensure notice of the conditions to successors in interest. The record shall be associated with all tax lots and parcels that constitute the subject property. The applicant need not record the separate staff report document containing the relevant

findings and conclusions. Once recorded, the applicants shall submit a copy of the recorded documents to the Executive Director.

2. This decision does not exempt the proposal from other non-National Scenic Area rules and regulations. It is the applicant's responsibility to ensure the use complies with all other applicable federal, state, and county laws and to obtain necessary approvals, including utility easement approvals.
3. A post-completion inspection is required. Please contact the Gorge Commission office when all construction is complete to schedule this inspection. The applicant may request interim inspections and Gorge Commission staff may at its discretion conduct interim inspections.
4. Any new land uses or structural development, alterations, or grading not included in the approved application or site plan will require a new application and review.
5. This accessory building is the only one allowed under Commission Rule 350-082-0220(1)(a). Future accessory buildings on this parcel less than 200 square feet will require full review under Commission Rule 350-082.
6. Areas that are disturbed in the process of placing the storage container on site will require reseeding and revegetation within one year of completion of construction. A recommended seed mix handout is included with this Decision.
7. All exterior building materials, including roof, doors, siding, trim, window casing and sash, decks, and railings shall be dark earth-tone colors. Only approved dark earth-tone colors for exterior materials shall be used. The following colors submitted by the applicant for the exterior of accessory building are consistent with this condition and are hereby approved:

Exterior Walls: Shelterguard "Classic Green"

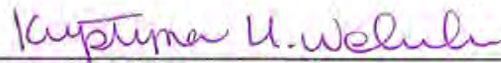
Exterior Roof: Shelterguard "Cocoa Brown"

Any proposed changes to these colors shall be submitted to the Gorge Commission for review for consistency with this condition of approval. The color of the development shall be maintained by painting and staining as necessary to maintain the approved color.

8. All exterior building materials including roofs, doors, siding, trim, window casing and sash, decks, and railings shall be nonreflective or have low reflectivity. The applicants proposed matte finish is consistent with this condition and is hereby approved.
9. If cultural resources are discovered, all activities within 100 feet of the cultural resources shall immediately cease and the applicants shall notify the Gorge Commission within 24 hours of discovery and the State Physical Anthropologist, Dr. Guy Tasa at (360) 586-3534 or [guy.tasa@dahp.wa.gov](mailto:guy.tasa@dahp.wa.gov). The cultural resources shall remain as found and further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

10. If human remains are discovered, all activities shall cease immediately upon their discovery. Local law enforcement, the Executive Director and Indian Tribal governments shall be contacted immediately. Further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

DATED THIS 3 day of October 2023 at White Salmon, Washington.



Krystyna U. Wolniakowski  
Executive Director

### Expiration of Approval

Commission Rule 350-082-0160 governs the expiration of this Director's Decision.

Expiration of this Director's Decision is automatic. The Executive Director does not notify applicants or landowners of decisions that are expired or may be close to expiring.

**This decision of the Executive Director becomes void on the 3 day of October 2025 unless construction has commenced in accordance with Commission Rule 350-082-0160(4).**

Commission Rule 350-082-0160(4) specifies that commencement of construction means actual construction of the foundation or frame of the approved structure.

Construction must be completed within two years of the date the applicant commenced construction. Commission Rule 350-082-0160(5) specifies that completion of the structure means completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the National Scenic Area approval. The date of this Director's Decision shall be considered the date the applicant commenced construction, unless the Gorge Commission or applicant demonstrates otherwise.

Once the applicant has commenced construction of one element in this decision, the applicant must complete all elements in this decision in accordance with Commission Rule 350-082-0160. The Gorge Commission does not use different commencement of construction dates for different elements in this decision.

The applicant may request one 12-month extension of the time period to commence construction and one 12-month extension to complete construction in accordance with Commission Rule 350-082-0160(6). The applicant must submit the request in writing prior to the expiration of the approval. If the applicant requests an extension of time to complete construction after commencing construction, the applicant shall specify the date construction commenced. The Executive Director may grant an extension upon determining that conditions, for which the applicant is not responsible, would prevent the



applicant from commencing or completing the proposed development within the applicable time limitation. The Executive Director shall not grant an extension if the site characteristics or new information indicate that the proposed use may adversely affect the scenic, cultural, natural or recreation resources in the National Scenic Area.

## Appeal Process

**The appeal period ends on the 2 day of November 2023.**

The decision of the Executive Director is final unless the applicant or any other person who submitted comment files a Notice of Appeal with the Commission within thirty (30) days of the date of this decision. Commission Rule chapter 350, division 70 governs appeal of this decision. This rule is available on the Gorge Commission's website and at the Gorge Commission office. You may contact the Gorge Commission office if you have questions about appealing this decision.

## Notes

1. Any new land uses or structural development such as driveways, parking areas, garages, workshops, fences or other accessory structures; or additions or alterations not included in the approved application or site plan will require a new application and review. New cultivation also requires a new application and review.
2. This decision does not address local, state, or federal requirements that may be applicable to the proposed development. The landowner is responsible for obtaining all applicable county, state, or federal permits required for the development.

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In accordance with Commission Rule 350-082-0150(6), the Gorge Commission staff mailed notice of this decision to the following governments, agencies, and organizations and persons who provided comment on the application:

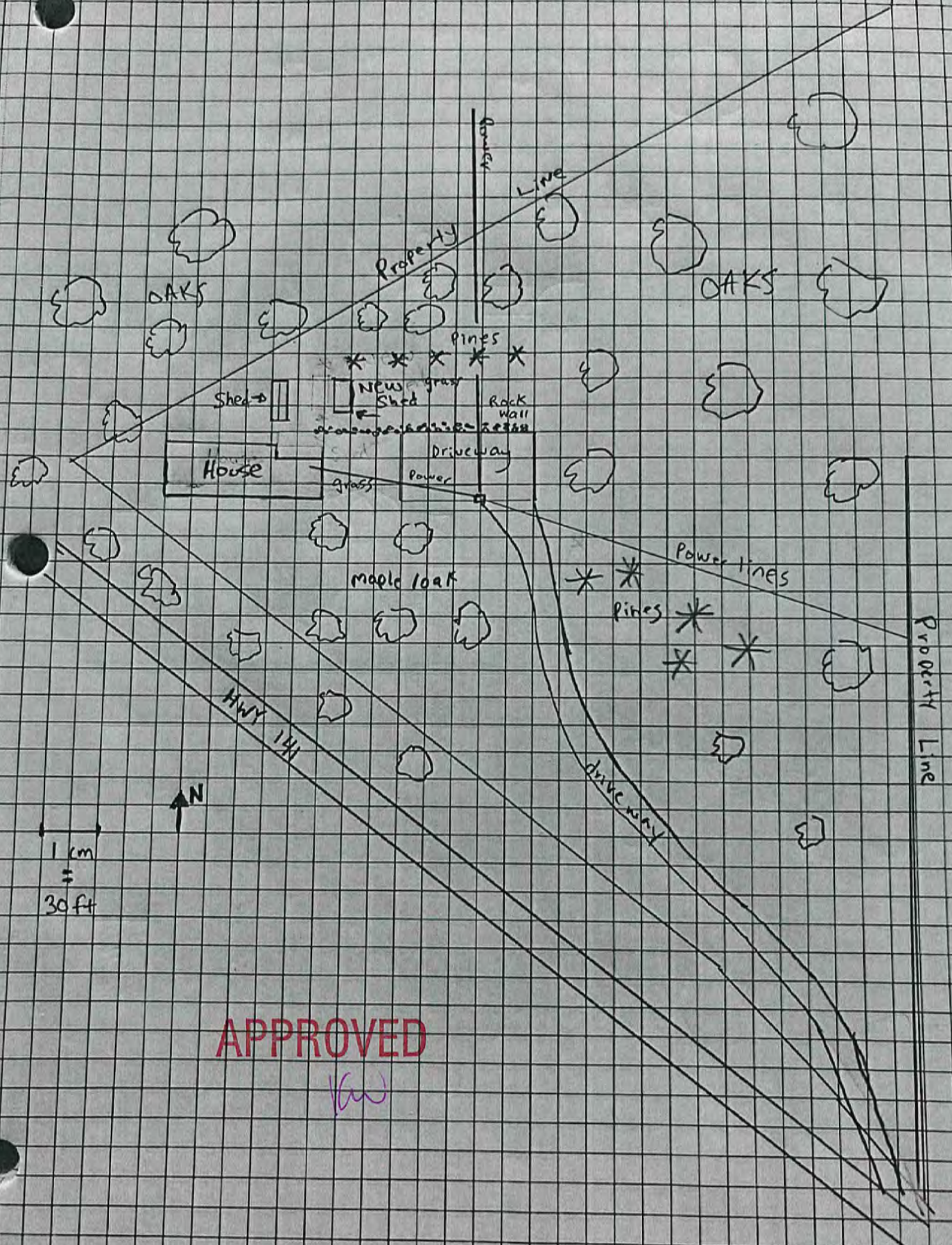
Confederated Tribes and Bands of the Yakama Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of Warm Springs Reservation of Oregon  
Nez Perce Tribe  
U.S. Forest Service National Scenic Area Office  
Washington Department of Archaeology and Historic Preservation  
Klickitat County Planning Department  
Klickitat County Building Department  
Klickitat County Public Works Department  
Klickitat County Health Department  
Klickitat County Assessor  
Washington Natural Heritage Program  
Washington Department of Fish and Wildlife  
Steve McCoy, Friends of the Columbia Gorge

Attachments:

Staff Report for C23-0005

Approved site plans and elevation drawings

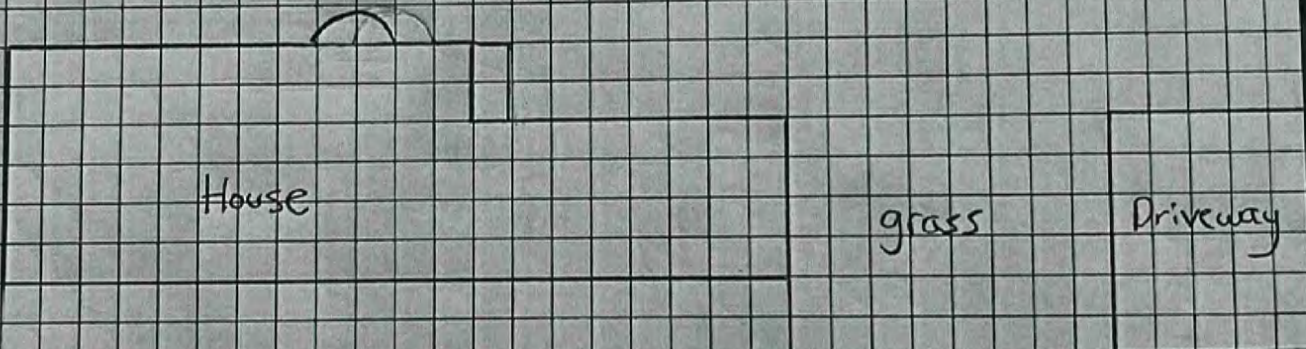
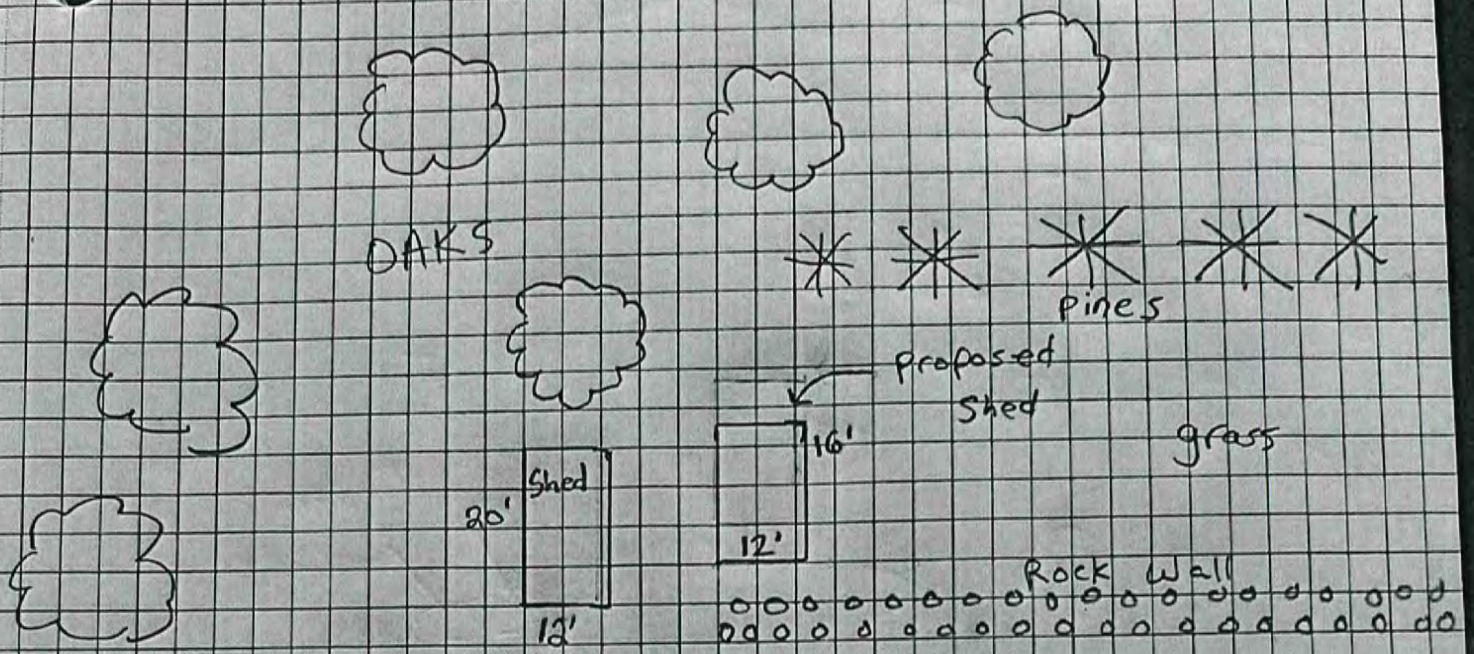




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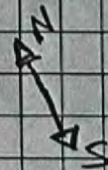




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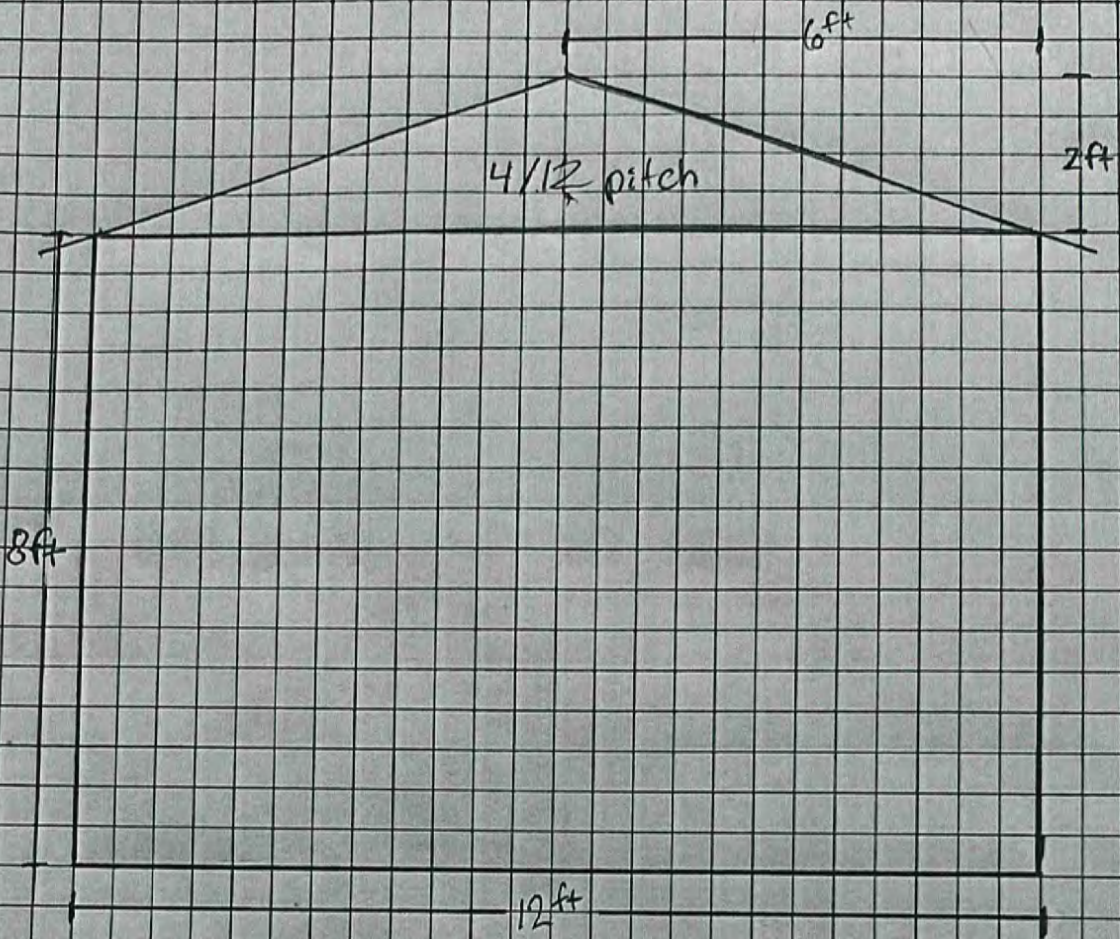
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South Side

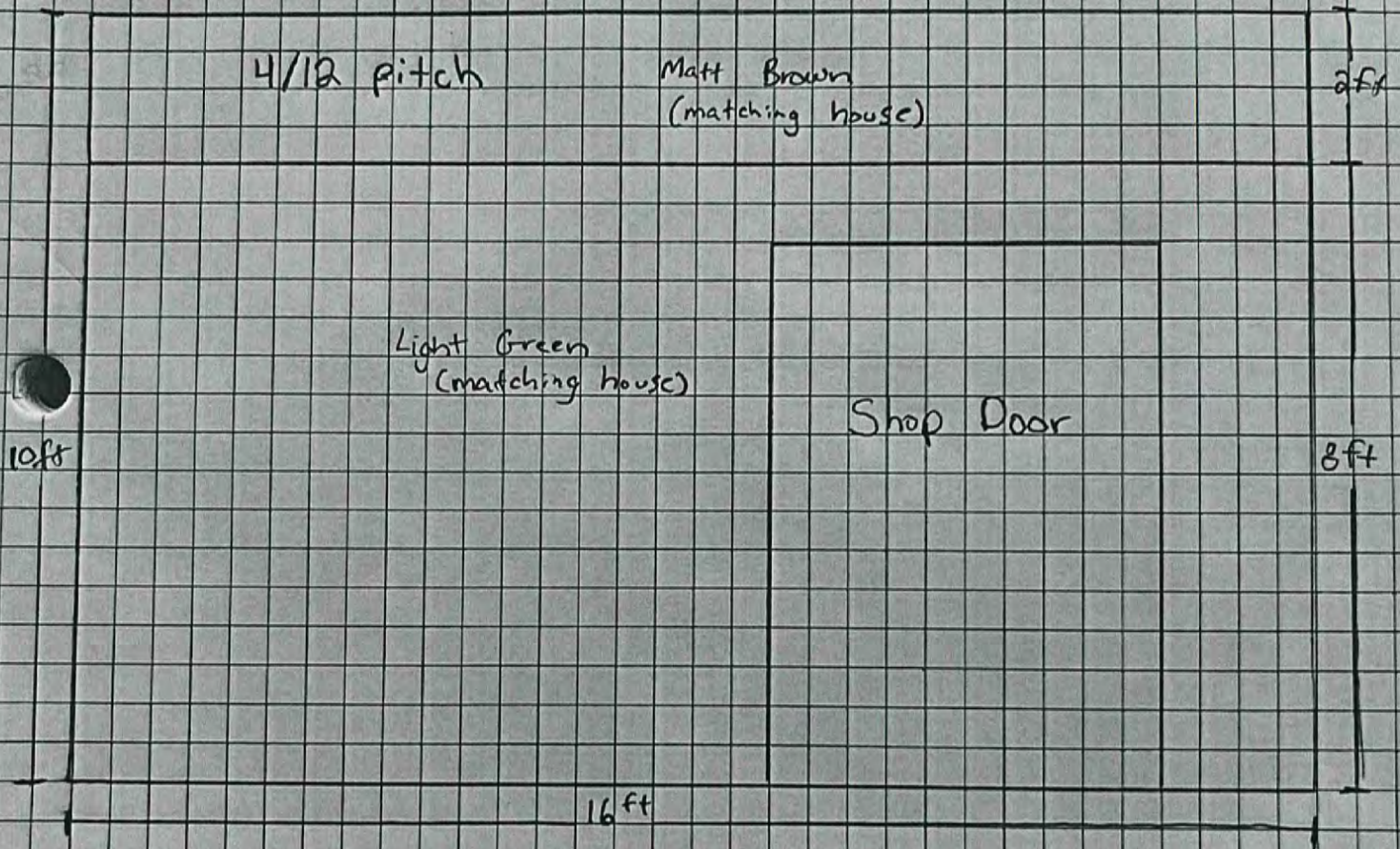


Scale 1 cm = 1 ft

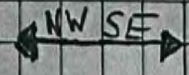
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West Side



APPROVED  
law



1cm  
= 1ft



**Recommended Seed Mixes, Mulch, and Fertilizer  
for Temporary and Permanent Revegetation in East Side Environments**  
Based on recommendations from Andrea Ruchty, district botanist, GPNF, Mt. Adams Dist.,  
and Robin Dobson, CRGNSA botanist

<i>Native Seed Mixture #1: Recommendations for Composition and Application Rates</i>		
Species	Hand Seeding including Handheld Spreaders	Hydromulcher
blue wildrye ( <i>Elymus glaucus</i> )	20 lbs/acre	15 lbs/acre
California brome ( <i>Bromus carinatus</i> )	20 lbs/acre	15 lbs/acre
slender hairgrass ( <i>Deschampsia elongata</i> )	10 lbs/acre	5 lbs/acre
broadleaf lupine ( <i>Lupinus latifolia</i> )		
Idaho fescue ( <i>Festuca idahoensis</i> )		
<b>Total</b>	<b>50 lbs/acre</b>	<b>35 lbs/acre</b>

<i>Native Seed Mixture #2: Recommendations for Composition</i>	
Species	% by wt.
California Brome ( <i>Bromus carinatus</i> )	20
Sheep fescue ( <i>Festuca ovina</i> )	40
Blue wildrye ( <i>Elymus glaucus</i> )	10
Canada bluegrass ( <i>Poa compressa</i> )	10
Blue bunch wheatgrass ( <i>Agropyron spicatum</i> )	20
Sickle-keeled lupine ( <i>Lupinus albicaulis</i> )	5 oz./100# seed
America vetch ( <i>Vicia Americana</i> )	5 oz./100# seed

<i>Non-Native Seed Mixture: Recommendations for Composition and Application Rates</i>	
Species	Application Rate
Annual ryegrass ( <i>Lolium multiflorum</i> )	10 lbs/acre (fine seed)
Perennial ryegrass ( <i>L. perenne</i> )	10 lbs/acre (fine seed)
Soft white winter wheat ( <i>Triticum aestivum</i> )	40 lbs/acre
Sickle-keeled lupine ( <i>Lupinus albicaulis</i> )	10 lbs/acre
<b>TOTAL</b>	<b>70 lbs/acre</b>

Herbaceous plants can be added after seeding:

Chrysothamnus nauseosus (rabbitbrush)	1 -2 oz./ac.
Achillea millefolium (Yarrow)	1 -2 oz./ac.
Eriogonum strictum	1 -2 oz./ac.
Lupinus bicolor or latifolius var. thompsonianus	1 -2 oz./ac.
Eriophyllum lanatum (Oregon sunshine)	1 -2 oz./ac.
Bitter brush (Purshia tridentate)	10 small plants/ac.
Arrowleaf Balsam root	



**Notes:**

**Application Method:** Hand or machine, ideally in the fall. Machines such as hydromulchers, usually have agitators which keep the seed well mixed and applied evenly. In hand-seeding operations it is more difficult to achieve an even distribution of seed. For this reason more lbs /acre have been prescribed to compensate for inadvertent patchiness. Hand seeding should utilize two passes of the area: 1 pass for small, fine seed such as slender hairgrass, and a second pass for the larger seeded species such as blue wildrye and California brome. Rice hulls may need to be added to the DEEL to get dispersion distance. Contact with the soil is very important, best results are achieved when the seed is lightly raked or pressed into the soil.

**Seed Storability:** Generally grass and forb species will hold reasonable germination (>80%) for 6-7 years in uncontrolled conditions. Thin-coated species such as *Bromus* will hold only 2-3 years or so.

**Seed Source:** Try to use appropriate local seed source for natives. Some flexibility for elevation is ok in a pinch. One native seed source is Bolson Seed Company, La Grande, OR (541)965-8285. Milestone Nursery (Lyle), Inside Passage Seed Co., Oregon Wholesale Seed Company (<http://www.oregonwholesaleseed.com/>), Rainier Seeds, Hughes Feed and Grain (the Dalles) and Dallesport Seed are other possible sources of seed, as well.

**Fertilizer:** Where there is a good "A" horizon probably don't need fertilizer. For sites with little organic matter use 200 lbs 16-20-0 /ac.

**Mulch:** Use certified weed free straw mulch whenever possible. Only 1-2" (2 tons/ac.) is needed and should be evenly applied. **Too deep can be more detrimental than none at all.** Ideally, it should be chopped and applied by machine. To further reduce the chance of introducing non-natives in to project areas, straw derived from native species is preferred. If not available, then straw from short-lived or non-persistent mulch sources such as annual rye or cereal grain seed production fields would be the next choice.

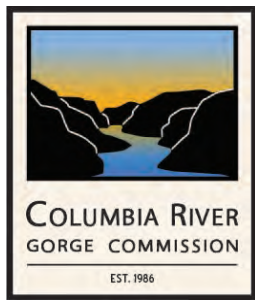
Using weed-free straw mulch is an important component in our strategy to control the spread of invasive species on the Forest. Weed-free straw is still a developing resource and its availability may be variable. Finding it will likely take some looking around. Oregon and Washington currently have weed-free certification programs. See the following websites for current lists of weed-free straw suppliers:

- ✓ [http://www.nwcb.wa.gov/WWHAM/WWHAM\\_suppliers.htm](http://www.nwcb.wa.gov/WWHAM/WWHAM_suppliers.htm)
- ✓ [http://oregon.gov/ODA/CID/weed\\_free\\_forage.shtml](http://oregon.gov/ODA/CID/weed_free_forage.shtml)

The following are some more potential contacts for weed-free straw:

- Elwyn Crutcher, Stanwood, WA, 360-939-2334 (he will deliver for a charge, is generally sold out by spring).
- Wallowa County Hay Growers Association:  
<http://www.certifiedwallowacountyhay.com/>
- John Williams, OSU Extension in Wallowa County, 541-426-3143.
- Randy Black, Oregon Dept of Agriculture, 503-986-4620.
- Allen Schnetzky, Weed Supervisor, Wallowa County 541-426-3332.





# Development Review Staff Report

## Summary of Application

<b>FILE NUMBER:</b>	C23-0005
<b>PROPOSAL:</b>	The Columbia River Gorge Commission has received an application for a new 12' x 16' (192 sq ft) accessory building.
<b>APPLICANTS:</b>	Scott White
<b>LANDOWNERS:</b>	Scott White and Amber Gruber
<b>SIZE and LOCATION:</b>	The subject parcel is approximately 11.5 acres in size and located adjacent to SR-141, and is described as Tax Lot Number 03-10-1100-0019/00 in the southern half of Section 11, Township 3 North, Range 10 East, Willamette Meridian, Klickitat County, Washington.
<b>LAND USE DESIGNATION:</b>	General Management Area (GMA) – Large-Scale Agriculture (160)

## Notice of Application Mailed to:

In accordance with Commission Rule 350-082-0110, the Gorge Commission staff mailed notice of this application to property owners within 200 feet of the subject parcel and sent email notice of this application to the following governments, agencies, and organizations:

Confederated Tribes and Bands of the Yakama Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of Warm Springs  
Nez Perce Tribe  
U.S. Forest Service National Scenic Area Office (USFS CRGNSA)  
Washington Department of Archaeology and Historic Preservation (DAHP)  
Klickitat County Planning Department  
Klickitat County Building Department  
Klickitat County Public Works Department  
Klickitat County Health Department  
Klickitat County Assessor  
Skamania County  
Washington Natural Heritage Program  
Washington Department of Fish and Wildlife (WDFW)  
Friends of the Columbia Gorge



## Written Comments Received From:

Friends of the Columbia Gorge (Steve McCoy, Staff Attorney)  
USFS CRGNSA (Chris Donnermeyer, Heritage Resource Program Manager)  
WDFW (Amber Johnson, Habitat Biologist)

## Findings of Fact

### A. Land Use

1. Scott White proposes a new 12' x 16' (192 sq ft) accessory building on the subject parcel. The parcel is eleven acres in size and adjacent to SR 141. Existing development on the property includes a dwelling and accessory building.
2. Commission Rule 350-082-220(1)(a) allows as an expedited review use:

*Except in Open Space and Agriculture-Special, accessory structures between 60 and 200 square feet in area and ten feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include signs, decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.*

The applicant proposes to place a 192 sq ft square foot, 10-foot-tall accessory building on the subject parcel. The proposed building is smaller than the 200 square foot maximum footprint allowed by this guideline, and shorter than the 10-foot maximum height allowed by this guideline. Earlier development reviewed by the Gorge Commission has not included review or approval of any new accessory structures. This is the first accessory building reviewed on the parcel under this guideline. A condition of approval will state that future applications for accessory structures reviewed under this guideline will be subject to full review.

### Land Use Conclusion:

The proposal is an allowed expedited review use, subject to Commission Rule 350-082-220(2) that protects scenic, cultural, natural, and recreation resources.

### B. SCENIC RESOURCES

1. Commission Rule 350-082-0220(2)(a)(A) states:

*In the GMA, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.*

The application does not include woven wire fences for agricultural use. This rule does not apply.

2. Commission Rule 350-082-0220(2)(a)(B) states:

*Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval. This guideline shall not apply to additions to existing buildings smaller in total area in square feet than the existing building, which may be the same color as the existing building.*

The proposed accessory building will be topographically visible from SR 141 in the foreground. The application materials included “green” as the proposed paint color. Staff requested a specific paint swatch on September 27, 2023, and the applicant provided Shelterguard “Classic Green” and Shelterguard “Cocoa Brown.” “Classic Green” and “Cocoa Brown” are dark colors that are found at the specific site on the shaded leaves and bark of Oregon white oak trees. A condition of approval is included in the Director’s Decision requiring all elements of the proposal to be this color, consistent with Commission Rule 350-082-0220(2)(a)(B).

3. Commission Rule 350-082-0220(2)(a)(C) states:

*Except signs, structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.*

The proposed accessory building will be topographically visible from SR 141. A condition of approval will require the use of matte paint to ensure the building will have low reflectivity. A condition of approval will require that the paint be maintained to ensure that the building will continue to have low reflectivity.

4. Commission Rule 350-082-0220(2)(a)(D) states:

*Any exterior lighting shall be sited, limited in intensity, hooded, and shielded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes. Shielding and hooding materials shall be composed of non-reflective, opaque materials.*

No exterior lighting is proposed. This rule does not apply. If any lighting is proposed in the future, it will require application and review by the Gorge Commission prior to installation.

5. Commission Rule 350-082-0220(2)(a)(E) states:

*Signs shall comply with 350-082-0520.*

No signs are proposed. This rule does not apply.

6. Commission Rule 350-082-0220(2)(a)(F) states:

*Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and designed to*



*achieve the applicable scenic standard (e.g., visual subordination, not visually evident).*

The proposed accessory building will be within one-half mile of SR 141. The proposed development takes place within the General Management Area. According to Commission Rule 350-082-0600(2), the applicable scenic standard for development in the General Management Area that is visible from Key Viewing Areas is *visually subordinate*.

Commission Rule 350-082-0070(202) defines “visually subordinate” as:

*One of the two scenic standards applicable in the National Scenic Area. A description of the relative visibility of a development, structure, or use where that development, structure, or use does not noticeably contrast with the defining landscape setting characteristics, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan) and the setting appears only slightly altered (distinctive characteristics of that setting remain dominant). As opposed to development, structures, or uses that are fully screened, structures that are visually subordinate may be partially visible but would be difficult to discern to the common viewer. Visually subordinate development, structures, or uses as well as forest practices in the SMAs shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of scale, proportion, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.*

The proposed accessory structure will be placed in an area designated with the Oak-Pine Woodland landscape setting. The defining characteristics of this landscape setting are described in the Management Plan as follows:

*Landscape profiles read as dramatic, moderately steep and sloping, with complex juxtapositions of form, line, color, and texture. Some Oak Pine Woodland landscapes are found on relatively flat terraces and benches at the top of steep slopes and some along deeply incised river canyons and basalt cliffs. Occasional rock outcrops and formations punctuate open vistas and woodlands. Most of this setting is found on gently rolling to hilly terrain, with grades averaging 15-40% and elevations from 80 feet to 3,000 feet above sea level. Pastures and small farm uses are interspersed in the gentler portions of this setting.*

The proposed accessory building will be within one-half mile of SR 141 and is topographically visible from the KVA. The proposed accessory building will be sited northwest of the existing dwelling, screening it from the KVA. The Management Plan’s description of the Oak-Pine Woodland landscape setting also describes the presence of scattered rural development on the landscape. Factors considered in determining the visual subordination of a development are siting, screening, and design, as stated in Commission Rule 350-082-0220(2)(a)(F).

The design of the accessory building is primarily characterized by its rectangular shape and dark earth tone color. The sharp corners and straight lines of the accessory building

will be obscured by existing screening vegetation, primarily Oregon White Oak. The dark green and brown color of the accessory building will ensure that it will blend in with the shaded areas around the development site. The presence of the development is not in itself contrary to the described scattered rural development of the Oak-Pine Woodland landscape setting. The proposed accessory building will be sited, screened, and designed to meet the applicable scenic standard visually subordinate.

### **Scenic Resources Conclusion:**

The proposed development is consistent with Commission Rule 350-082-220(2)(a) that protects scenic resources in the National Scenic Area.

## **C. CULTURAL RESOURCES**

1. Commission Rule 350-082-220(2)(b)(A) states that the expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey or historic survey as determined by 350-082-0620(2)(a)(C) and 350-082-0620(2)(a)(D).
2. Chris Donnermeyer, Heritage Resource Program Manager, U.S. Forest Service Columbia River Gorge National Scenic Area, reviewed the land use application and determined in a Cultural Resources Survey Determination letter, dated August 17, 2023, that pursuant to Commission Rule 350-082-620(2)(a)(C) that a Cultural Resource Reconnaissance Survey is not required because the proposed use would occur on a site that has been determined to be located within a low probability zone, and does not occur within 500 feet of a known archaeological site.
3. Commission Rule 350-082-620(2)(a)(D) describes when a historic survey is required. In his August 17, 2023, Cultural Resources Survey Determination letter, Mr. Donnermeyer determined that a historical survey is not required because the proposed use would not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older and would not compromise features of the surrounding area that are important in defining the historic or architectural character of significant buildings or structures that are 50 years old or older.
4. Commission Rule 350-082-220(2)(b)(B) states:

*The GMA guidelines that protect cultural resources and human remains discovered during construction (350-082-0620(6) and (7)) shall be applied as conditions of approval for all development approved under the expedited development review process, including development in the SMAs.*

Commission Rule 350-082-0620(6) protects cultural resources discovered during construction, and Commission Rule 350-082-0620(7) contains provisions addressing discovery of human remains during construction. Conditions of approval are included in the director's decision consistent with these rules.



## Cultural Resources Conclusion

With conditions protecting unknown cultural resources and human remains discovered during construction, the proposal is consistent with Commission Rule 350-082-220(2)(b) that protects cultural resources in the National Scenic Area.

## D. NATURAL RESOURCES

1. Commission Rule 350-082-0220(2)(d)(A) protects water resources. The rule states:

*The development is outside water resources and their buffer zones. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.*

The Gorge Commission's water resource inventory data do not show any water resources on the subject parcel. The closest identified stream is over 650 ft away. There are no other water resources in the vicinity of the proposed development. Commission Rule 350-082-0640(6)(f) and (g) describe the water resource buffer zones for perennial and intermittent streams, respectively. The buffer for perennial streams is 100 feet. The buffer for intermittent streams, provided they are not used by anadromous or resident fish, is 50 feet. The proposed accessory building will be outside the buffer of both streams.

2. Commission Rule 350-082-0220(2)(d)(B) protects sensitive wildlife and rare plants. The rule states that the development is allowable if it meets one of the following:

*(I) The development is at least 1,000 feet from known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range) and known rare plants.*

*(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained.*

*(III) For sensitive wildlife, the development is within 1,000 feet of known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range), but an appropriate federal or state wildlife agency determines the Priority Habitat or sensitive wildlife site is not active, the proposed development would not compromise the integrity of the Priority Habitat or wildlife area, or the proposed development would not occur during the time of the year when wildlife species are sensitive to disturbance.*

*(IV) For rare plants, the development is within 1,000 feet of known rare plants, but the Oregon Biodiversity Information Center or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the rare plants.*

The Gorge Commission's sensitive wildlife inventory shows the development site is located within Deer and Elk Winter Range. The Gorge Commission's sensitive plant inventory does not identify any potentially sensitive plants within 1,000 feet of the project site. The development will disturb the ground to create a level space for the placement of the accessory building. Commission staff notified Amber Johnson, with Washington Department of Fish and Wildlife of the proposed development and sent a copy of the site plan on August 15, 2023. The notice included a comment period of 21 days that ended on September 5, 2023. WDFW did not indicate any concerns with the proposed development. The development is consistent with the criteria of Commission Rule 350-082-0220(2)(d)(B)(III).

#### **Natural Resources Conclusion:**

With the conditions of approval discussed above, the proposed development is consistent with Commission Rule 350-082-0220(2)(d) that protects natural resources in the National Scenic Area.

### **E. RECREATION RESOURCES**

1. Commission Rule 350-082-0220(c) states:

*The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels*

There are no established recreation sites on adjacent parcels. This rule does not apply.

#### **Recreation Resources Conclusion:**

The proposed development is consistent with Commission Rule 350-082-0220(2)(c) that protects recreation resources in the National Scenic Area.

### **F. TREATY RIGHTS PROTECTION**

1. Commission Rule 350-082-0220(2)(e) provides protection of tribal treaty rights from new development in the National Scenic Area. It states:

*(A) Proposed development shall not affect or modify any treaty or other rights of any Indian tribe.*

*(B) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if a tribal government submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.*

*(C) Except as provided in subsection (B) above, 350-082-0130 shall not apply to proposed development reviewed under the expedited review process.*

Notice of the proposed development was sent to the four Treaty Tribe governments on August 15, 2023. Pursuant to Commission Rule 350-082-0220(2)(e)(C), the 30 day notice



period for tribal treaty rights and consultation does not apply. No comments were received from any tribal government during the 10 day comment period for expedited review uses, or in the 30 days after the initial notice. Staff concludes that the proposed development does not affect or modify any known treaty or other rights of any Indian tribe.

**Treaty Rights Conclusion:**

The proposed development is consistent with the guidelines in Commission Rule 350-082-0220(e), which provides protection for treaty rights and any other rights of any Indian tribe.

BG  
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